

Message Text

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ACTION FBOE-00

INFO OCT-01 ARA-10 ISO-00 A-01 L-02 /014 W
----- 015916

O R 042000Z MAR 75
FM AMEMBASSY BRASILIA
TO USIA WASHDC IMMEDIATE
INFO SECSTATE WASHDC 7993
DEPARTMENT OF JUSTICE WASHDC

UNCLAS SECTION 1 OF 2 BRASILIA 1634

USIAC

USIA FOR ICG

E.O. 11652: N/A

TAGS: N/A

SUBJECT: BELO HORIZONTE OFFICE RENTAL AND LEGAL ACTION

SUMMARY--THE LANDLORD OF THE OFFICE SPACE AT THE USIS
BRANCH POST AT BELO HORIZONTE HAS FILED LEGAL ACTION IN
AN ATTEMPT TO GAIN A JUDGEMENT FOR CR\$52,452 (US\$6,919.79)
FOR A RETROACTIVE RENTAL INCREASE ALLEGEDLY ASSESSABLE UNDER
BRAZILIAN LAW AND TO ABROGATE US GOVERNMENT LEASE OPTION
RIGHTS. A JUDGMENT IN FAVOR OF THE COMPLAINANT IS TO BE
AUTOMATIC UNLESS WE RESPOND BEFORE MARCH 14. PERMISSION
IS REQUESTED FROM THE DEPARTMENT OF JUSTICE FOR THE
EMBASSY TO APPOINT A LEGAL REPRESENTATIVE TO CONTEST THE
COURT ACTION.

1. THE USIS BRANCH POST AT BELO HORIZONTE HAS BEEN SERVED
WITH A WRIT OF CITATION FROM THE FEDERAL JUSTICE--MINAS
GERAIS STATE SECTION TO ANSWER A COMPLAINT FILED BY DR.
BERNARDO FIGUEIREDO MAGALAHES, LESSOR OF THE USIS BELO
HORIZONTE OFFICE SPACE UNDER LEASE AGREEMENT S-6-FBO-101
DTD AUG 1, 1965 AND AMENDMENT NO. 1 DTD AUG 1, 1970. THE
COMPLAINT ALLEGES THAT THE FIRST ARTICLE OF BRAZILIAN
DECREE NO. 4 DTD FEB 7, 1966 AUTHORIZES MONETARY CORRECTION
(RENTAL INCREASE OF LEASES EVERY TWO YEARS BY LEGAL
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ARBITRATION. THE COMPLAINT LAYS CLAIM TO CR\$52,452

(US\$6,919.79) FOR ALLEGED ADDITIONAL RENT DUE UNDER THE
CITED LEGAL PROVISION FROM NO 1, 1972 TO DATE OF
COMPLAINT.

2. THE COMPLAINT ALSO ATTEMPTS TO ABROGATE THE US
GOVERNMENT OPTION RIGHTS UNDER THE LEASE FOR THE PERIOD
NOV 1, 1975 TO OCT 31, 1980 BY INCLUDING A STATEMENT
THAT THE LESSOR DOES NOT WANT TO RENEW THE LEASE AND
SERVES NOTICE THAT THE LEASE WILL END ON OCTOBER 31,

3. THE FOREGOING COMPLAINT WAS SERVED ON THE USIS
OFFICE AT BELO ON FEB 26 EVEN THOUGH OFFICER NAMED IN
THE COMPLAINT AS THE REPRESENTATIVE OF THE SECRETARY
OF STATE (HOWARD E. DANIEL, BCAA) DENIED THAT HE WAS A
LEGAL REPRESENTATIVE AND FURTHER ATTEMPTED TO IMPRESS
UPON THE PROCESS SERVER THAT THE DOCUMENT SHOULD BE
TRANSMITTED THROUGH THE BRAZILIAN MINISTRY OF FOREIGN
AFFAIRS.

4. THE TRANSMITTING COURT DOCUMENT TO THE COMPLAINT,
A WRIT OF CITATION. PROVIDES THAT UNLESS IT IS CONTESTED
WITHIN 15 DAYS IT WILL PRESUME TO BE ACCEPTED BY THE
DEFENDANT. THEREFORE UNLESS THE EMBASSY RESPONDS BEFORE
MARCH 14, IT FACES AN AUTOMATIC JUDGMENT IN FAVOR OF THE
COMPLAINANT IN THE COURT OF FIRST INSTANCE.

5. WE BELIEVE THE LEASE CITED WILL BE ON FILE AT FBO
AND/OR THE AGENCY. THE PROVISIONS OF THE LEASE
IMPORTANT TO THE CASE AT HAND ARE SUMMARIZED IN
PARAGRAPHS 6 TO 8 BELOW.

6. LEASE S6 FBO 101 WHEN ENTERED INTO AUG 1, 1965
COVERED OCCUPANCY BY THE STATE DEPARTMENT WHICH THEN
HAD A CONSULATE AT BELO. THE LEASE COVERED THE PERIOD
AUGUST 1, 1965 TO JULY 31, 1970 AND CONTAINED RENEWAL
OPTIONS FOR 5 ADDITIONAL ONE YEAR PERIODS (1970 TO 1975).
MONTHLY RENTAL WAS STATED AS *450 PAYABLE IN BRAZILIAN
CRUZEIROS AT THE OFFICIAL RATE OF EXCHANGE.

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TO USIA WASHDC IMMEDIATE
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7. AMENDMENT NO. 1 TO S 6 FBO 101 (IA) DATED AUG 1, 1970 EXTENDED THE LEASE FOR A PERIOD OF FIVE YEARS FROM NOV 1, 1970 TO OCT 31, 1975, WITH "FIRM OPTION FOR AN ADDITIONAL PERIOD OF FIVE YEARS.", I.E., FROM NOV 1, 1975 TO OCT 31, 1980. STARTING NOV. 1, 1970, THE MONTHLY RENTAL WAS INCREASED TO US\$600 PAYABLE IN CRUZEIROS AT THE OFFICIAL RATE OF EXCHANGE. RENTAL FOR THE FIVE YEAR OPTION PERIOD FROM NOV 1, 1975 IS TO START AT THE EQUIVALENT OF US\$600 BUT IS TO BE ADJUSTED THEREAFTER PURSUANT TO THE GETULIO VARGAS INDEX (A BRAZILIAN COST OF LIVING INDEX).

8. WITH THE EXTRAORDINARY INCREASES IN RENTAL RATES IN BRAZIL OVER THE LAST SEVERAL YEARS, THERE IS LITTLE DOUBT THAT THE CURRENT MONTHLY RENTAL FOR THE BELO OFFICE SPACE IS FAR BELOW THE CURRENT MARKET FOR SIMILAR PROPERTY.

9. A BRAZILIAN LEGAL ADVISOR AFTER A REVIEW OF THE LAW CITED BY THE LESSOR BELIEVES THAT THE PROVISIONS OF BRAZILIAN DECREE LAW NO. 4 OF FEB 7, 1966 (PARA. ONE) SHOULD NOT BE APPLIED RETROACTIVE TO THE DATE WHEN NOTICE IS SERVED ON THE LESSEE.

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10. WE BELIEVE THAT IT WOULD BE APPROPRIATE (AND MORE EFFICIENT) TO NEGOTIATE WITH THE LANDLORD FOR A MORE REASONABLE RENTAL FOR THE OFFICE SPACE IN QUESTION, IF THE AGENCY APPROVES. WE CANNOT HAVE SERIOUS NEGOTIATIONS HOWEVER WITH THE THREAT OF LEGAL ACTION IMMINENT.

11. THE DECISION OF THE DEPARTMENT TO FOLLOW THE THEORY OF RESTRICTIVE SOVEREIGN IMMUNITY (ACTING LEGAL ADVISER JACK B. TATE'S LETTER TO ACTING ATTORNEY GENERAL PHILIP B. PERLMAN DATED MAY 19, 1952) SUGGESTS

THAT WE MUST RESPOND TO THE COMPLAINT FILED BY THE LESSOR.

12. AUTHORITY IS THEREFORE REQUESTED FROM THE DEPT. OF JUSTICE FOR THE EMBASSY TO ISSUE A POWER OF ATTORNEY TO THE LAW FIRM OF DR. AMARAL AND DR. PIEPER TO REPRESENT THE U.S. GOVERNMENT IN RESPONDING TO THE LANDLORD'S COMPLAINT. THE SERVICE TO BE PROVIDED WOULD INCLUDE THE REQUIRED LEGAL RESEARCH INCLUDING THE ASSESSMENT OF OUR LEASE AS A VALID LEGAL DOCUMENT AND PREPARATION OF LEGAL BRIEFS. IT IS URGENT THAT THIS AUTHORITY BE GRANTED IMMEDIATELY. WE UNDERSTAND THERE IS NO POSSIBILITY OF OBTAINING A DELAY OF COURT ACTION. TUCH

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